IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5158 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DANSING BHAVSING PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR MB PARIKH for Petitioner No. 1

MR AJ DESAI, AGP. for Respondents No. 1-2

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 22/02/2002

ORAL JUDGEMENT

1 The petitioner joined the service in Co-operative Department of the Government of Gujarat on 12/08/1949 on the post of Peon on permanent basis. On 31/01/1974 he was granted promotion to the post of Naik. However, due to adverse family circumstances the petitioner requested

by letter dated 04/03/1994 that he waived his right of promotion for a period of one year. By communication dated 14/03/1974 request of the petitioner was declined stating that the same could be considered provided the petitioner waived his right of promotion permanently. On 30/04/1974 the petitioner wrote to the authority stating that in case his request could be granted only if he waived right of promotion permanently he would waive the promotion accordingly but the officer was further requested to do the needful in accordance with the prevailing rules.

2 Thereafter, on 31/8/1975 the petitioner once again approached the authorities requesting them to promote him to the post of Naik. However, the said request was turned down on 14/12/1979 relying upon his letter dated 24/5/1974, which the petitioner had tendered in pursuance of his letter dated 30/4/1974. An application for review was made on 4/1/1980 but the same came to be rejected on 1/4/1980. In the meanwhile one Shri M.R.Joshi, who was admittedly junior to the petitioner came to be promoted as Naik on 21/12/1979. Thereafter, it appears that the petitioner wrote various letters/representations to different authorities, however, the petitioner's case was not considered.

3. On 7/10/1988 respondent No.2 asked the petitioner as to whether he was willing to accept the post of Naik in leave vacancy. On 11/10/1988 the petitioner accepted the said offer and was accordingly granted promotion on 30/11/1988 by respondent No.2. The petitioner resumed his duty on the post of Naik on 28/12/1988. Thereafter, the petitioner has retired on 31/1/1989 on reaching the age of superannuation.

4. Mr.Parikh, learned Advocate appearing for the petitioner and Mr.A.J.Desai, learned AGP. appearing for the respondents have been heard. The main thrust of the argument on behalf of the petitioner is that the respondent authorities have erred in ignoring the circular dated 7/1/1966 at Annexure "E". In the alternative, it was submitted that the said circular has not been understood and applied as was required to be applied in the case of the petitioner.

5. The circular dated 7/1/1966 specifically states in its preamble to the effect that the policy in the Co-operative Department originally was that an employee who would forego promotion for the purpose of continuing at one station of posting due to family or personal reasons shall be permitted to request for continuance of

the posting at the same station only on the condition of agreeing to give up the right to promotion permanently. However, the said policy was reconsidered and the departmental heads were instructed by the said circular of 7/1/1966 to exercise their discretion in the manner laid down in the circular. In the present case, it is not necessary to deal with all the requirements stated in first five paragraphs and only paragraph No.6 is material. Paragraph No.6 of the circular provides that the employees who have opted in writing to give up their entitlement to promotion permanently can apply on the basis of the circular subject to the condition that a period of one year must have elapsed from the date when the employee had agreed in writing to forego promotion.

6. In the present case it is not in dispute that on 31/8/1979 when the petitioner applied for being reconsidered for promotion the period of one year and more had already elapsed. However, the authorities turned down the request of the petitioner for being considered for promotion by stating that the petitioner had vide his letter dated 24/5/1974 agreed to give up his right for promotion permanently, and hence, was no longer eligible.

7. It is apparent that the authorities have lost sight of the relevant terms of the circular in question and/or have not understood the said circular resulting in denial of the request made by the petitioner.

8. The respondent authorities are directed to consider the case of the petitioner for promotion to the post of Naik to which the petitioner is held to be entitled,if otherwise eligible, from 27/12/1979 i.e. the day on which one Shri M.R.Joshi was promoted to the post of Naik though he was admittedly junior to the petitioner. In view of the fact that the petitioner has already retired on 31/1/1989 at the age of superannuation, 27/12/1979 shall be fixed as deemed date for considering the case of the petitioner for promotion to the post of Naik. The petitioner shall be entitled to the consequential benefits and the respondent authorities are directed to implement this order within a period of three months from today.

9. Rule made absolute to the aforesaid extent only. There shall be no order as to costs.

Sd/-

(D.A.Mehta, J)

m.m.bhatt